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ABSTRACT

This study compares multiple person jury verdicts based on video tapes with individual decisions based on written trial accounts. An actual civil court case was used to make both the simulated video and written versions as authentic as the original trial. Adultvolunteers from the general public and college students provided the jurors. Results indicate that the use of a video taped version of a trial, when compared to the use of a written version of the same trial, will result in measurable different outcomes and that the video taped version will more closely reflect the outcome of the original trial. Decisions reached by simulated 6 and 12 person juries, when compared with decisions reached by individual responses, will result in measurable different outcomes and will more closely reflect the outcome of the original trial. Hence, the further removed the procedure is from the real world model of a jury watching the trial and reaching a consensus verdict, the less likely the outcome will concur with the original trial and therefore the less useful the technique will be in legal communication research. (Author/DE)

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AN EXAMINATION OF SOME FACTORS IN JURY DECISION-MAKING

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In a thoughtful and thorough review of jury research in America (Erlanger, 1970) states:

> Any further research along the lines suggested here will have to face the problem of collection of data. Jury bugging is, of course, not legal (Kalven and Zeisel, 1966: ch. 1). However, it seems that the solution adopted by Strobtbeck and Simon is quite workable. A jury drawn from a "real" venire, instructed by a judge, and listening to tapes in a court envionment, is probably a good simulation of the real thing. The additional advantage, of course, is that different juries can try the same case. (The disadvantage of hearing, rather than seeing, the trial can perhaps be remedied through the use of video tapes.)

This injunction seemed to make good sense and influenced two previous studies which have been completed making use of a video taped trial and simulated six and twelve person juries. See Behind Locked Doors: An Investigation of Certain Trial and Jury Variables by Means of a Video Taped Trial, (The Barrister, 1973) and A View from Inside the Jury Room: An Analysis of the Verdicts and Decision-Making Variables of Simulated Juries, (Paper read at the S.C.A. Convention, 1974). These studies yielded interesting and suggestive data which conformed when adjusted for consumer price inflation to the verdict of the original trial jury in a federal district court.

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However a perusal of jury research since Erlanger's study in 1970 suggests that for the most part Erlanger's injunctions are being ignored. It appears that most researchers have continued to use the responses of single individuals rather than simulated juries of six or twelve persons, and most jury research has been based on written accounts of trials rather than audio tapes or video tapes of trials. In support of this general statement, I will briefly examine the methodology of six recent jury studies.

Only one in addition to the present writer, (Miller, Bender, Florence, and Nicholson, 1974) in Reel Versus Real: What's the Verdict? makes use of a video taped trial. The study utilizes individual responses to a video taped civil case although the authors indicate future plans to utilize simulated juries. One study (Stone, 1969) involves a written vignette and simulated juries; while the remaining four studies are based on written accounts of trials and individual verdicts resulting from the written accounts. In this group are found Friend and Vinson, (1974), Kaplan and Simon, (1972), Landy and Aronson, (1969), and Jacobson and Berger, (1974).

Consideration of this situation lead me to consider the utility of testing Erlanger's comments on jury research, since I was in agreement with him. Hence, I should like to put forward three hypotheses.

H. 1 In jury research the use of a video taped version of a trial when compared to the use of a written version of the same trial will result in measurably different outcomes and the video taped version will more closely reflect the outcome of the original trial.

H. 2 In jury research decisions by simulated juries when compared with decisions by individual responses will result in measurably different outcomes and the jury decisions will more closely reflect the outcome of the original trial.

H. 3 In jury research the farther removed the procedure is from the real world model of jury seeing trial and reaching a consensus verdict, the farther removed the outcome will be from the original trial outcome and hence less useful as legal communication research.

Method

After consultation with area trial lawyers a decision was made to utilize a civil trial for the following reasons: Rather than a simple guilty-not guilty verdict an infinitely variable decision would be possible if the jury found for the plantiff and had to decide on a sum of money to award as damages; civil trials receive less publicity and press coverage and the jury would be less likely to have heard about the case chosen; the issues are less likely to be emotional ones and thus the probability of rational decision-making is more likely. The civil trial chosen was recreated on video tape with a running time of about five hours.

In recreating the trial, one of the original lawyers and several of the original witnesses were used. Where replacements

were necessary, people with suitable technical backgrounds were used; i.e., a replacement engineer was a professor of engineering, an experienced trial lawyer was used, a local judge served as judge, etc. While the trial was taped in the University of Delaware television studio an authentic court room set was erected and every effort was made to preserve the court atmosphere. Four vidicon cameras were used; they were put in the position of the jury box and all activity was directed to them. Special effects were avoided and all attempts were made to record the trial in a straightforward way.

The case utilized concerned an iron worker who was injured when the steel bar joist roofing base he was working on collapsed sending him twenty feet to the ground and resulting in severe back and spinal injuries. At the time of the trial he was still suffering considerable pain and had regained only partial use of his body. A basic issue in the case was the cause of the collapse of the bar joists. The plaintiff argued that the joists were not properly fabricated and welded by the manufacturer and thus the manufacturer was liable under the legal doctrine of product warranty.

The defense maintained that the joists collapsed because they were not properly positioned and spot welded before decking for the roof was placed upon the joists. If this view prevailed, the manufacturer would not be liable for damages. If the jury decided for the plaintiff, it would also have to award damages based on

actual out-of-pocket losses, reduction of future earnings because of the accident, and compensation for pain and suffering. All of the exhibits used in the original trial which included photographs of the accident site, samples of the collapsed joists, medical bills, etc. were available for the taping and were given to the jurors to take with them into the jury room. This is in accord with real jury practice.

The written version of the trial was prepared by the investigator who took notes from a showing of the video tape version of the trial and transposed them into typewritten form for multilith duplication. The written version was read by the attorneys who participated in the video taped version and both agreed that the written version did objectively and faithfully report the taped version of the trial.

In the actual trial of Taylor v. Congaree Iron and Steel, the jury found for Mr. Taylor and awarded him the sum of $489,000. Since four years had elapsed between the date of the actual trial and the beginning of the experiments, we decided to adjust the expected verdict for inflation. By consulting the consumer price indices we determined that consumer prices had risen by 23.4% during the intervening years; this procedure yielded an adjusted award of approximately $604,000. The mean award of our non manipulated juries operating from the video taped version of the trial was $614,500 and the median was $600,000. These were then established as the baseline verdicts for the study. The validity

of this procedure was additionally reinforced by the juries themselves since each of the juries spent some time considering the effects of the rising cost of living when deliberating on the money to be awarded.

Subjects

Two types of subjects were used. Adult volunteers who had served on a real jury within the past three years were recruited and paid for their services at the usual jury rate. College student volunteers were the second type of subject utilized.

Since two previous studies had shown that adult and student jurors arrived at almost identical verdicts (Anapol, 1973; Anapol, 1974) the verdicts of student and adult jurors were used interchangably in this study. Since two researchers had found that six and twelve man juries reach similar verdicts (Anapol, 1973; Anapol, 1974) and (Kessler, 1972) the verdicts of six and twelve man juries were combined.

Procedure

All of the jurors were told that they were participating in a study of how juries decide cases but were given no other information. The video tape jurors were shown the trial in five fifty minute segments plus a fifteen minute charge from the judge. Based on the experience of Gunther (1972) with the taping of real

trials in Ohio, a five minute break was given the jury at the end of each video taped segment. A lunch break of forty-five minutes was given after three segments. The jurors ate lunch together with an experimenter present to serve as a "marshal" to discourage any discussion of the case at that point. At the conclusion of the viewing of the trial each juror filled out a form indicating a ranking of his perception of twelve decision-making factors. The factors can be found in Table 3 and include such items as attorney personality, attorney arguments, and exhibits. Subjects also indicated how well they felt they understood the trial and the judges' charge to the jury. At this point those making individual decisions were asked to do so and to enter the results on a form and to answer questions about age, educational status, etc. Those making individual decisions were then excused.

Those subjects in the video tape and jury decision groups were also asked to fill out the factor ranking sheets and then begin to deliberate until they reached unanimous agreement. The deliberations were video taped and have been reported on in previous studies (Anapol, 1973; Anapol, 1974). At the conclusion of the deliberations the jurors filled out an additional form on which they ranked decision-making factors after deliberation and indicated the verdict of the jury. They were then excused.

The procedure for the subjects responding to the written version was essentially similar except that the subjects read the written version of the trial and a verbatim transcript of the

instructions of the judge. The subjects were required to return to the experimenters the trial materials as soon as they had finished reading them since retention would be equivalent to note taking by the jurors, a procedure which almost all American courts prohibit. The subjects using the written stimulus then filled out the same forms as the subjects in the video tape group.

While it was necessary to make up juries from those persons available on a given trial date, all variables were assigned by random selection. All juries were balanced in regard to demographic factors in so far as this was possible. All juries contained both males and females, whites and non-whites.

Results and Discussion

An examination of Tables 1 and 2 will provide the reader with both the decisions or verdicts of the jurors as well as the mean of the sums awarded, plus the results of "T" tests of the significance of the differences between the mean awards. It should be noted that the mean awards reported are for those making awards; those individuals or juries which failed to make awards are not included in the means of the sums awarded.

The "T" test results indicate that there is but one chance in one thousand that the differences between the means are the result of chance variation. Since the pattern of the sums awarded follows exactly the pattern set forth in the hypotheses it seems reasonable

to say that at least in terms of dollar amounts awarded the three hypotheses advanced have been supported.

The verdicts were analyzed by means of chi square using Fisher's exact test. The verdicts were divided on a basis of "award" and "no award" so that the hung juries could be accounted for. When the video tape and written juries were compared we found a corrected chi square value of .22 with 1 degree of freedom significant at the .05 level, which we regard as tending to support H. 1 but not definitive.

The chi square value for the comparison of individual video tape and individual written verdicts was .27, which like the previously reported chi square above was significant at the .05 level. Hence, there is a trend of support in terms of verdicts for H. 2, but it also is not definitive. All of the remaining possible verdict groups were subjected to chi square analysis and produced similar results which were significant at the .05 level.

TABLE 1

A COMPARISON OF INDIVIDUAL AND JURY VERDICTS BASED UPON VIDEO TAPE AND WRITTEN VERSIONS OF THE CASE

Version of Case	Jury or Individual	Number of Juries or Individuals	Decisions for Pltf.	Decisions for Defense	Hung Juries	Mean of Sums Awarded*
Video Taped	Jury	6	6 (100%)	0	0	$ 614,500.
Video Taped	Individual	48	42 (87.5%)	6 (12.5%)	-	543,300.
Written	Jury	7	5 (71%)	0	2 (29%)	484,400.
Written	Individual	44	36 (82%)	8 (18%)	-	351,406.

*This mean was calculated on the basis of the awards of those subjects making an award to Taylor. Those deciding for the defense or on hung juries were excluded.

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TABLE 2

T VALUES FOR THE DIFFERENCE BETWEEN THE MEAN AWARDS

Verdicts Compared	T Value	Degrees Freedom	Level Significance
Video Tape Jury v. Video Tape Individual	4.40	46	.001
Video Tape Jury v. Written Jury	7.09	9	.001
Video Tape Jury v. Written Individual	16.40	40	.001
Video Tape Individual v. Written Jury	6.14	45	.001
Video Tape Individual v. Written Individual	53.53	76	.001
Written Jury v. Written Individual	14.18	39	.001

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Therefore, it can be said that the pattern of the verdicts when divided on an award-no award basis tends to support the three hypotheses, but not nearly so strongly as the analysis of the means of the sums awarded. It appears that there are two reasons for this difference. First, this case appears to be one in which the plantiff has simply made a stronger case then the defense. This observation is supported by the original verdict of the real jury and the behavior of the numerous juries who have decided the case for the plaintiff in every instance or became a hung jury. We defined a hung jury as one which concluded it could not reach agreement on the liability of the defense to the plantiff. There were no examples of juries unable to reach agreement on the sum to be awarded.

Second, the variability or spread of the sums awarded tended to increase the probability that significant differences would be found. In fact the lower degree of variability of the verdicts suggests to us that the differences in treatment of the subjects in terms of jury or individual or video tape or written must be extremely powerful in order to yield such significantly different awards.

In seeking explanations for these differences in awards we turned next to the rankings by the jurors of the decision-making factors which are reported in Tables 3, 4 and 5. The first step in the analysis was the running of Spearman correlations for all the possible combinations of data pairs. We found six

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moderately high positive correlations. The highest .86 was between written version jurors before deliberation and written individual decisions for the plaintiff. This merely suggests that jurors working from the written version tended to react similarly and is what we might expect to find.

The next highest correlation .77 was between video tape juries before deliberation and Individual written decisions for the plaintiff. This suggests that there was a degree of similarity between the perceptions of the tape jurors and those working from the written version who decided for the plaintiff. The third highest Spearman r comes as a bit of a surprise, it was .76 and was between jury decisions before deliberations based on the written version and individual written decisions for the defense. We should speculate that this means that the act of deliberation changed the jury members perceptions sufficiently to account for the differences in final verdicts and awards. Next or fourth highest correlation was between individual written decisions for the plaintiff and individual written decisions for the defense, .61. This suggests that these individuals did not see the case all that differently even though they did reach different decisions. Also with .61 was a pair we had expected to be highly correlated; this was taped juries after deliberation compared with written juries after deliberation.

The only other pair above .50 was at .55 and involved a comparison of jury tape before deliberation with jury written before

deliberation. The one negative correlation of -.30 was the one that would be expected from H. 3. The comparison of tape jury after deliberation with individual written decisions for the defense was the pair involved. This demonstrates that extreme differences in method did produce the greatest differences in perception of decision making factors.

The second type of analysis I did was to examine the factors to determine which factors were the most variable. It was found that the influence of the personality of the lawyers tended to be ranked lower by those responding to the written version and consistently so. It would certainly be expected that the video tape version would permit more information on personality and hence more acute judgement of personality.

Another factor that showed considerable movement was the importance of attorney summaries. It tended to rise with written version and moved up to first place for those making individual decisions for the defense. The explanation may be that the defense lawyer gets the last word in the summing up and that those who were strongly impressed by those words voted for the defense. One other factor which consistently moved to a higher rank on the written data was defense exhibits. The important point here is that there were no defense exhibits and the question was put in simply as a kind of check on comprehension. This data suggests that the subjects responding to the written version of the trial simply did not understand the case as well as those

responding to the taped version. It would appear that this finding is in direct agreement with Kalven and Zeisel (1968) who say that "Amount of damages awarded is a variable of the clarity of the proof of damages." That is the video tape subjects understood the case more clearly and consistently awarded the plantiff more money. As a further check on this point the subjects were asked to indicate on a five point scale how well they thought they understood the trial and the instructions of the judge. The results can be seen in Table 6.

TABLE 3

RANKINGS OF DECISION-MAKING FACTORS BY JURORS WHO MADE GROUP DECISIONS FROM THE WRITTEN VERSION OF THE CASE

Factor	Before Deliberations Rank	Before Deliberations Mean Rank	After Deliberations Rank	After Deliberations Mean Rank
Personality of Defense Lawyer	12	10.63	14	11.50
Personality of Plaintiff Lawyer	11	9.36	12	11.30
Arguments of Defense Lawyer	10	8.64	10	8.50
Arguments of Plaintiff Lawyer	9	7.45	9	7.50
Instructions of the Judge	8	7.36	7	6.40
Plaintiff's Exhibits	2	3.64	1	3.10
Defense Exhibits	3	4.90	6	6.30
Plaintiff's Expert Witnesses	1	2.81	2	3.50
Plaintiff's Eyewitnesses	4.5	5.00	4.5	5.40
Defense Expert Witness	6	6.09	4.5	5.40
Plaintiff's Doctor Testimony	4.5	5.0	3	5.30
Summing Up of Attorneys	7	6.45	8	6.80
Influence of Jury Foreman	-	-	13	11.40
Influence of Other Jurors	-	-	11	10.70

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TABLE 4

RANKINGS OF DECISION-MAKING FACTORS BY JURORS WHO MADE INDIVIDUAL DECISIONS FROM THE WRITTEN VERSION OF THE CASE

Factor	Pro Pltf. Rank	Pro Def. Rank	Pro Pltf. Mean Rank	Pro Def. Mean Rank
Personality of Defense Lawyer	11	11	10.08	9.0
Personality of Plaintiff Lawyer	10	12	9.83	9.50
Arguments of Defense Lawyer	9	9	7.70	8.0
Arguments of Plaintiff Lawyer	6	10	5.45	8.25
Instructions of Judge	12	4.5	10.16	5.75
Plaintiff's Exhibits	3	8	4.38	6.75
Defense Exhibits	7	3	6.66	5.50
Plaintiff's Expert Witnesses	1	4.5	2.58	5.75
Defense Expert Witness	5	6	5.42	6.0
Plaintiff's Eyewitnesses	2	7	3.29	6.25
Plaintiff's Doctor Testimony	4	2	5.33	4.50
Summing Up of Attorneys	8	1	6.88	2.75

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TABLE 5

RANKINGS OF FACTORS OF DECISION-MAKING BY JURORS WHO MADE GROUP DECISIONS FROM THE VIDEO TAPED VERSION OF THE CASE

Factor	Before Deliberations Rank	Before Deliberations Mean Rank	After Deliberations Rank	After Deliberations Mean Rank
Personality of Defense Lawyer	8	8.9	10	10
Personality of Plaintiff Lawyer	5	5.8	6	6.8
Arguments of Defense Lawyer	7	7.3	12	10.2
Arguments of Plaintiff Lawyer	4	3.3	4	3.7
Instructions of the Judge	11	10.1	8	9.1
Plaintiff's Exhibits	3	3	2	2.4
Defense Exhibits	12	10.3	14	14
Plaintiff's Expert Witnesses	1	2	1	1.8
Defense Expert Witness	10	9.6	9	9.3
Plaintiff's Eyewitnesses	2	2.2	3	2.6
Plaintiff's Doctor Testimony	6	6.3	5	5.5
Summing Up of Attorneys	9	9.3	7	8.7
Influence of Jury Foreman	-	-	13	12.4
Influence of Other Jurors	-	-	11	10.2

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TABLE 6

JUROR COMPREHENSION OF THE TRIAL AND JUDGES INSTRUCTIONS

Version of Case Used	Type of Decision	Comprehension* Rating for Trial	Comprehension* Rating for Judge
Video Taped	Jury	1.22	1.66
Video Taped	Individual	1.37	1.69
Written	Jury	1.77	2.0
Written	Individual	1.83	1.97

*Based on the following scale:

(1) Understood very well

(2) Understood fairly well

(3) Not sure

(4) Did not understand well

(5) Understood poorly

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All of the subjects seemed to have felt that they understood the case and the judge reasonably well. However, those responding to video tape did feel somewhat more confident about their comprehension of the case and the instructions of the judge. This confidence is supported by the low ranking given the factor of defense exhibits which were non-existent in this case.

Of interest is the fact that both sets of juries, written and video tape, felt that they were not greatly influenced by the foreman or the other jurors. Despite this low ranking given to these factors the sums awarded were significantly different when simulated juries were employed. As an explanation to this seeming paradox we can offer two thoughts. First, possibly jurors are not always clearly aware of exactly what influences them and the rankings are based on self image rather than actual experience. Second, from our video tapes of jury deliberations we have observed that the final award is part of a bargaining process. There are high award jurors and low award jurors and the final award is a compromise between them. The jurors may not consider this bargaining and compromise process as "influence."

Finally, we come to the task of trying to account for the differences we have detected in this study. It would appear that clarity of understanding does play a role and that the higher award groups do appear to understand the case better thus supporting Kalven and Zeisel (1968). Another important element would appear to be the superior ability of video tape to transmit the

personality and emotional aspects of the case. The subjects who read the case seemed to get the basic facts of the case reasonably well and that would account for the lack of variability in the verdicts themselves. On the other hand the use of the video tape version does appear to more strongly impress the subjects regarding the personality and emotional aspects of the case. The suffering of the plaintiff is much more meaningful and effective when the subject watches the video tape of his testimony in place of reading an objective and factual written account of the same events.

Conclusions

H. 1 would appear to be sustained at least in terms of sums awarded by juries. I would also suggest that in research in which criminal trials are used and sentences assigned by juries there is a direct analogy; that is length of sentence imposed is a direct analogy to dollars awarded. Hence, we can say that in jury research the use of a video taped version of a trial when compared to the use of a written version of the same trial will result in measurably different outcomes and the video taped version will more closely reflect the outcome of the original trial.

H. 2 would also appear to be sustained at least in terms of sums awarded. Hence, I can say that in jury research decisions

by simulated juries when compared with decisions reached by individual responses will result in measurably different outcomes and the jury decisions will more closely reflect the outcome of the original trial.

H. 3 would also appear to be sustained at least in terms of sums awarded. Hence, I can say that in jury research the farther removed the procedure is from the real world model of the jury watching the trial and reaching a consensus verdict, the farther removed the outcome will be from the original trial and therefore less useful as legal communication research.

This brings me to the question of the validity and the value of much of the research cited in the introduction to this paper. Since most of the research does center on sentence length or sum awarded there does seem to be at least some basis to suggest that replication of these studies in terms of the findings of this study might produce some interesting results. I would also suggest that Erlanger (1970) was essentially correct in his admonitions regarding future jury research.

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